

Remarks

The renumbering of claims 31-36 as claims 1-6, respectively, is noted and formally indicated in the amendment above.

The Examiner has rejected claim 3 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. More particularly, the Examiner has noted the phrase "the opposite end" in line 4 lacks antecedent basis. Claim 3 has now been appropriately amended to overcome the rejection.

The Examiner has also rejected claims 1 and 3 under 35 USC 102(b) as being anticipated by US Patent No. 5,100,277 to Musil. It is respectfully submitted that Musil does not anticipate claims 1 and 3. Specifically, with respect to claim 1, Musil does not disclose a hopper having an open upper end and a lower outlet, as contemplated by the present invention. As shown in the drawings of Musil, particularly Fig. 4, the outlet of Musil is on a side of the hopper 46 (rear of the hopper 46 relative to arrow 13 in Fig. 1) thus necessitating the hopper pivoting mechanism described at column 6, lines 29-65. Further, Musil does not disclose a chassis supporting a removable freight container. Musil discloses a paving machine 10 having a feed hopper 18. There is nothing in the disclosure of Musil to indicate that the hopper 18 is removable and it certainly is not a freight container as contemplated by the claims of the present application. With respect to claim 3, Musil specifically teaches away from operating at a speed and angle to throw material following an arcuate path. As discussed at column 10, lines 27-56 the nature of paving asphalt is such that gravitational separation of aggregate is undesirable, so Musil utilizes shields 113 and 114 to ensure that gravitational separation is limited. Musil desires to merely drop material from the end of the slat conveyor downward into the feed hopper 18. Throwing the material at an angle and speed along an arcuate path would only contribute further to gravitational separation of aggregate. See also column 13 lines 44-52 and column 16 lines 2-6.

The Examiner has also rejected claims 2 and 4-6 under 35 USC 103(a) as being unpatentable over Musil. It is respectfully submitted that claims 2 and 4-6 are

not obvious in view of Musil for the reasons discussed above with respect to claims 1 and 3 and further for the reasons set forth below. Specifically, with respect to claim 2, because Musil does not disclose a chassis supporting a removable freight container, there is no suggestion in Musil that a fifth wheel hitch would be desirable or that such could even be used with the disclosed device. Further, with respect to claims 4-6, Musil teaches away from employing the conveyor at an angle and speed to throw material along an arcuate path to fill a container as discussed above. Because Musil teaches against the gravitational separation of aggregate, there is no suggestion in Musil to find an optimum angle and speed to attain an arcuate flow of material required to fill a freight container from one end as contemplated by the present invention.

In conclusion, it is believed that this application is in condition for allowance, and such allowance is respectfully requested.

Should the Examiner believe that a telephonic conference would be useful in furthering the present application toward allowance, the undersigned attorney would welcome such a call.

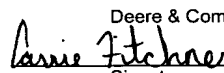
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Respectfully,

  
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